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Weaponization of the Law against Human Rights Defenders, Attacks on Lawyers and the Ineffectiveness of Domestic Remedies

Submission for the UPR on the Philippines 2022

1. The **NATIONAL UNION OF PEOPLES' LAWYERS (NUPL)**, founded in 2007, is a nationwide voluntary organization of progressive human rights lawyers and law students rendering *pro bono* legal assistance primarily to marginalized sectors of the Philippines. It is the national affiliate of the International Association of Democratic Lawyers (IADL) which has ECOSOC consultative status.
2. In its submission for the 2017 Third Cycle of the Universal Periodic Review (UPR) on the Philippines, NUPL highlighted the issues that the Philippine government failed or refused to address in accordance with the recommendations that it supported in the previous UPR in 2012.
3. Among the issues raised then were the widespread culture of impunity, the torture against human rights defenders, especially those who are labelled as “communists” or members of “communist front” organizations, the prevalence of human trafficking cases, and the State’s inadequate responses to socio-economic concerns.
4. This year, NUPL submits anew its bird’s eye view on the Philippines’ performance in light of the recommendations that it supported in the 2017 UPR, and in the process provide bases to respect, protect and fulfill the human rights of the Filipino people.

On the Weaponization of the Law

5. In response to **Recommendation No. 133.42 to ensure human rights training for State security forces in order to enhance their capacity to protect human rights (Ghana)**, the Philippine Government has instead been “*using, circumventing, reinterpreting, or reinventing the law to justify or legitimize State action or repression.*”ⁱ
6. A *de facto* nationwide crackdown against activists and progressive organizations is being carried out as “anti-crime”, “counter-insurgency” or “counter-terrorism” operations. The police, aided by the military, conduct night raids into civilian communities under the pretext of implementing search warrants, but these operations result in multiple deaths, with eyewitness accounts of summary executions and evidence-planting by security forces. Army units also kill non-combatants, usually activists and peasant leaders, and make it appear that they died during firefights.
7. State security forces and agencies routinely file trumped-up charges against human rights defenders, activists, political opposition, critics and dissenters, through shortcuts and legal anomalies in blatant disregard of due process.
8. It is not uncommon that a rights advocate from one part of the Philippines is arrested on the basis of a warrant that was irregularly obtained in another distant part of the countryⁱⁱ; or that offices or residences of activists are simultaneously raided in the wee hours using shotgun search warrantsⁱⁱⁱ; or that leaders and members of civil society are arrested for illegal possession of firearms and explosives obviously planted by the police and military^{iv}. What is casually claimed as legitimate police operations is belied by the manufacture of evidence, the use of perjured witnesses and the construction of false narratives.
9. In its purported objective to counter terrorism, the Philippine Government is institutionalizing a legal infrastructure that disregards or circumvents universally-accepted rights, thus failing to comply with **Recommendation No. 133.75 to continue efforts to combat terrorism, the drug trade and drug usage, within the framework of the Constitution, the law and international human rights standards (Iraq)**.

10. The Anti-Terrorism Act of 2020^v is draconian because it cuts through protected rights and violates basic penal law principles. Among its most questionable provisions are: (1) the opaque designation by the political Anti-Terrorism Council of individuals and organizations as “terrorists^{vi}” without the right to be heard, (2) the arrests on mere suspicion of committing terrorism that can be ordered by such executive agency without the benefit of a court-issued warrant, and (3) the detention for an extended period of 24 days without charges.^{vii}

11. These not only compromise the basic human rights enshrined in the Constitution and international human rights instruments, but also undermine judicial independence. Despite an unprecedented 37 Petitions assailing it, the Government secured a Supreme Court ruling that, save for separable components of just two provisions, the Act is constitutional.^{viii}

On Attacks against Lawyers

12. The Philippine Government has accepted **Recommendation No. 133.134 to continue its efforts on improving access to justice (Azerbaijan)**. But with the heightened and worsening attacks against members of the legal profession, the people’s access to justice is put at peril.

13. From July 2016 until February 2022, NUPL has recorded at least 171 incidents of different forms of attacks against lawyers that are *prima facie* related to the exercise of the profession^{ix}. What is alarming is that these attacks are more commonly seen among lawyers engaged in human rights practice and public interest cases, with a noteworthy number related to the “drug war” cases. The incidents range from increased surveillance, to public vilification (“red-tagging”),^x to the filing of nuisance charges and even to brazen cold-blooded murder. A number of attacks indicate that they were committed by State or State-led actors.

14. In November 2018, Benjamin Ramos, land rights advocate and NUPL officer, was shot and killed just days after he helped investigate the massacre of farmers.^{xi} In March 2021, Angelo Karlo Guillen, another NUPL officer, survived an attack when he was repeatedly stabbed by multiple assailants.^{xii} He is co-counsel in the legal challenge against the Anti-Terrorism Act and lawyers for indigenous peoples who oppose the building of a dam in their ancestral land.

15. In September 2021, Juan Macababba, was shot seven times by two gunmen in front of his home^{xiii}. Macababba, also a NUPL officer, had represented peasants caught in land conflict and environmental degradation. He is among the many^{xivxv} members of the legal profession killed under the Duterte administration.

16. Aside from physical attacks, human rights lawyers have been persecuted directly or upon instigation by State security forces for representing the marginalized or for criticizing official legal acts and policies. In 2018, Katherine Panguban, another NUPL officer, was slapped with false kidnapping charges after she assisted a mother in retrieving her child – who witnessed the massacre of farmers - being held under police custody.^{xvi}

17. Despite the mounting calls to stop the unabated attacks against lawyers, judges and prosecutors, to investigate the attacks and to prosecute the perpetrators, the responses of the Philippine government remain passive and reactive.

18. The continuing attacks have demonized human rights lawyering, and explain the hesitance of lawyers to engage in human rights practice. These are attacks not only against the lawyers in their personal and organizational capacities, but also against the people’s right to have access to effective legal assistance particularly in the defense and promotion of human rights.

19. The double standard in the implementation of the law – contestable as some of them are – is even more glaring during the COVID-19 pandemic when people who were striving to make ends meet were arbitrarily arrested for health protocols violations and were subjected to cruel and inhuman punishment such as placing them in dog cages or soaking them up under the sun^{xvii}; while government officials were allowed to celebrate birthday parties at a time when social gatherings were prohibited^{xviii}, or were taken off the hook for not undergoing quarantine even after being tested positive with the virus^{xix}.

Ineffective Domestic Remedies

20. The State policy of targeting activists in police and military operations, the lack of transparency and impartiality during investigations, the unprofessional and sloppy investigative procedures, and general sanction to abuses committed by State forces are in breach of international human rights standards and prevent access to justice, and thus are non-compliant with **various Recommendations on improving state policies and institutions,^{xx} countering terrorism and access to effective remedies.**

21. The government immediately denies the occurrence of rights violations even before investigations have taken place. In the rare instance of an investigation, however, it is substandard, cursory, and skewed in favor of security forces. Its independence and credibility are also questionable as investigators belong to the same agencies responsible for the rights violations.

22. There is also abuse of the principle of “presumption of regularity”. Investigators do not subpoena records or conduct exhaustive inquiries, but merely rely on the assumption that State security forces acted lawfully. The burden to prove irregularity is placed on the victims’ families who are not allowed access to information or documents that could offer leads and build cases against the perpetrators.

23. Invoking national security, government agencies refuse to release information and records – such as the identities of those involved, incident and investigation reports, and other official documents – to the victims’ families, rights workers, and even the Commission on Human Rights.

24. On the other hand, the police are quick to file cases against activists, yet there are paltry and far between prosecutions against security forces for rights violations. The cases only recently reviewed by the Justice Department or filed in court are just a drop in the bucket of thousands of human rights violations recorded. Moreover, only low-ranking personnel are investigated, but not the commanders or officials who planned and sanctioned the operations, making it a token effort to give the superficial appearance that the justice system is functioning.

25. There is no effective mechanism to investigate and prosecute grave human rights violations against activists and human rights defenders, violating the commitment to improve access to justice. (Recommendation 133.134)

26. While Administrative Order No. 35 created the Inter-Agency Committee (IAC) way back in November 2012 to investigate and prosecute cases of political violence like “extra-legal” killings, enforced disappearances and torture, this body has proven to be ineffective in prosecuting such crimes or combatting impunity. In the seven years since its creation, the IAC handled only 385 cases dating all the way back to 2001, and only 13 cases resulted in convictions.^{xxi}

27. By comparison, since 2001, there have been at least 1,963 extra-judicial killings, 252 cases of enforced disappearances, and 1,570 cases of torture documented.^{xxii} These figures do not include other forms of politically-motivated attacks and rights violations against activists such as frustrated and attempted killings, arbitrary arrest, threats, and red-tagging. Up until now, nobody has been arrested or prosecuted for the grisly murders of known activists and human rights lawyers.^{xxiii}

28. Except for ex-Gen. Jovito Palparan,^{xxiv} no other high-ranking official was held accountable for the widespread rights violations committed by security forces. Palparan’s conviction is a rarity and was impacted by the dogged determination of the families, lawyers, and human rights groups.

29. Very few cases filed by victims against security forces ever reach the courts since most are dismissed by prosecutors or by the Ombudsman. To date, not one of the suits filed by NUPL and many civil society have been acted upon by the latter.^{xxv} Security officials directly involved in rights violations are merely re-assigned to different units or promoted. To illustrate, Gen. Debold Sinas, the regional commander of security forces responsible for the massacre of farmers in March 2019 was promoted to national police director.^{xxvi}

30. The extraordinary remedies of the writs of amparo, habeas data, and habeas corpus is proven ineffective because the government blocks victims' applications for relief, violating again the commitment to improve access to justice. (Recommendation 133.134)

31. Possible judicial remedies to rights violations are negated because the government, through the Solicitor-General and state prosecutors, oppose and frustrate the victims' efforts in availing of these remedies.

32. In 2019, the NUPL, human rights group *KARAPATAN*, women's alliance *GABRIELA*, and humanitarian group *Rural Missionaries of the Philippines* filed petitions for *amparo* and *habeas data* to secure protection from attacks, surveillance, and vilification by security forces. The Solicitor-General opposed the petitions and sought their immediate dismissal. The courts hearing the cases dismissed them despite the attacks on their members and witnesses before and after the cases were filed.^{xxvii} These cases remain pending on appeal despite several years. The Government has continuously denied the red-tagging activists and the dangers it poses despite abundant experience.^{xxviii}

33. The writ of *habeas corpus* likewise is proven ineffective because security forces undermine the process by manufacturing evidence to rush the filing of indictments. The courts automatically dismiss the victims' petitions for being "moot and academic" and refuse to address the illegality of the arrest.

34. To illustrate, in September 2019 activist Alexandra Pacalda was abducted by soldiers and detained, without a warrant, in a military camp. After her whereabouts were ascertained, Pacalda's family instituted *habeas corpus* proceedings. Only after nine days in detention did the government file charges against Pacalda. Yet, the court dismissed the case saying that it was already mooted by the indictment.^{xxix}

35. This approach, long set in Philippine case law during the Marcos Sr. dictatorship,^{xxx} violates the right against arbitrary arrest and detention, encourage security forces to manufacture evidence, and compels state prosecutors to haphazardly issue indictments instead of properly evaluating the evidence.

36. Detainees' rights are violated and safeguards against harassment cases are undermined, in breach of international human rights standards. (Recommendations 133.44, 133.53, 133.75)

37. While in police or military custody, detainees suffer maltreatment and denied access to their families and lawyers. To illustrate, in October 2019, security forces arrested 62 activists, laborers and cultural performers, including minors.^{xxxi} Some of the detainees were physically abused, threatened, and denied meals. The lawyers and families of the minors detained at the police station were prevented from seeing them even as the minors underwent interrogation unassisted by counsel.

38. In cases filed to persecute activists, the preliminary investigation stage has been ineffective in shielding innocent people from indictment and guard against patently-fabricated charges. For one, security forces who file contrived cases of involvement in armed encounters in faraway localities often indicate false addresses. This *modus* prevents the latter from receiving subpoenas, depriving them of the chance to respond to the charges. Thereafter, the prosecutors indict the clueless activists and arrest warrants are easily secured against them.^{xxxii}

39. Even when activists learn of the charges and are able to submit countervailing evidence, many prosecutors carry out the preliminary investigation in a perfunctory manner and indict activists anyway. Prosecutors often insist that evidentiary matters should be tackled only during trial, making the safeguard illusory especially since the charges are often non-bailable and result in lengthy pre-conviction detention.^{xxxiii}

40. Detainees suffer years of pre-conviction detention under extremely poor conditions, violating the commitment to ensure a speedy and fair trial for all accused. (Recommendation 133.132) (USA)

41. Court proceedings are exceptionally slow and trials can last years, while detainees are held in over-congested subhuman jails with low budgets for food and essentials. Jails lack proper facilities for the sick, elderly, and pregnant detainees. In July 2020, activist Reina Nasino gave birth to her daughter after being detained for months under poor prison conditions. The court refused to allow Nasino to remain at the hospital to breastfeed her child or to be provided with natal care facilities in jail. Her baby died three months later and she even had to endure inhuman treatment during the burial.^{xxxiv}

42. Prolonged pre-conviction detention force many detainees to plea-bargain for reduced sentences. The spike in conviction rates in drug-related cases from 32.7% in 2017 to 78.22% in 2018, 82.95% in 2019, and 82.54% in 2020 is the result of new guidelines allowing plea-bargaining deals which, until then, were not permitted in drug cases.^{xxxv} The accused plead guilty not because the charges are true or the evidence compelling, but because they wish to avoid protracted court proceedings while languishing in jail under inhuman conditions.

43. In cases that do go to trial, the detainees spend years in pre-conviction detention.^{xxxvi} Even bail applications that are supposed to be heard on an expedited basis can last for months or even years.

44. We thus humbly ask the Council to take into account this submission by lawyers on the ground parallel to any information prepared by the Philippine government and other stakeholders this 4th Cycle of the UPR.

45. We call for prompt, effective, thorough, competent and an impartial independent investigation or inquiry as well as welcome and support visits and fact-finding missions of pertinent UN officials and international NGOs and to seriously consider their recommendations.

46. We ask the Council to adopt any and all concrete steps to oblige the Philippine government to undertake in good faith measurable responses to address the use of the law to persecute human rights defenders; the unmitigated attacks on the members of the legal profession; and on the virtual ineffectiveness and even unavailability of domestic remedies to attain justice for human rights violations.

47. In closing, we ask the Council to call out and enjoin the Philippine government to faithfully comply with the recommendations it has accepted and noted in the last Cycle, reconsider those it has rejected or disputed, abide by its pledges and commitments as a member of the Council, and abide in good faith with its duties and responsibilities it is bound as a party to instruments on international human rights and international humanitarian law. #

ⁱ Edre U. Olalia, **Weaponization of the Law and Ineffective Domestic Remedies: Riding in Tandem to Shoot Down Dissent**, May 25, 2021.

ⁱⁱ **“Family cries foul over way police arrested Natividad Castro”**, Rappler, February 19, 2022, accessible at: <https://www.rappler.com/nation/family-cries-foul-over-way-police-arrested-natividad-castro/>.

ⁱⁱⁱ **“Two activists arrested on Human Rights Day”**, Sunstar, March 10, 2022, accessible at: <https://www.sunstar.com.ph/article/1879593/manila/local-news/2-activists-arrested-on-human-rights-day>.

^{iv} **“Lumad chieftain, 6 others arrested in Misamis Oriental”**, Bulatlat, June 26, 2020, accessible at: <https://www.bulatlat.com/2020/06/26/lumad-chieftain-6-others-arrested-in-misamis-oriental/>.

^v Full text of Republic Act No. 11479, otherwise known as **“The Anti-Terrorism Act of 2020”**, accessible at: https://lawphil.net/statutes/repacts/ra2020/ra_11479_2020.html.

^{vi} **Sec. 25, Designation of Terrorist Individual, Groups of Persons, Organizations or Associations, RA 11479.**

^{vii} **Sec. 29, Detention Without Judicial Warrant of Arrest, RA 11479.**

^{viii} **Full text of the decision of the Supreme Court on the Anti-Terror Act:**
<https://www.cnnphilippines.com/news/2022/2/15/Supreme-Court-full-decision-anti-terrorism-law.html>.

^{ix} NUPL, **Prima facie profession or work- related attacks on lawyers & judges in the Philippines from July 2016 to February 2022 (See Annex A - NUPL’s By the Numbers: PRIMA FACIE PROFESSION OR WORK RELATED ATTACKS ON LAWYERS & JUDGES IN THE PHILIPPINES FROM JULY 2016 TO FEBRUARY 2022).**

^x The latest attack was when a government official reacted to an NUPL statement debunking her misquoting a Supreme Court ruling: **“NTF-ELCAC spox firm 'no such thing as red-tagging,'** Philippine News Agency, March 26, 2022, accessible at: <https://www.pna.gov.ph/articles/1170716>.

^{xi} **“Human rights lawyer, founding member of NUPL killed”**, CNN Philippines, November 7, 2018, accessible at: <https://www.cnnphilippines.com/news/2018/11/07/Founding-member-of-NUPL-killed-Negros-Occidental.html>.

^{xii} **“Lawyer for red-tagged tribal folk stabbed; laptop, documents taken”**, Philippine Daily Inquirer, March 5, 2021, accessible at: <https://newsinfo.inquirer.net/1403259/lawyer-for-red-tagged-tribal-folk-stabbed-laptop-documents-taken>.

^{xiii} **“Human rights lawyer in SouthCot gunned down in front of his residence”**, Mindanews, September 16, 2021, accessible at: <https://www.mindanews.com/top-stories/2021/09/human-rights-lawyer-in-southcot-gunned-down-in-front-of-his-residence/>.

^{xv} Out of the 67 members of the legal profession killed under the present Duterte administration as of this writing, 59 are considered by NUPL as *prima facie* related to, incident with or by reason of the exercise of the profession. **(See Annex B - ALL LAWYERS KILLED DURING THE DUTERTE ADMINISTRATION from JULY 1, 2016 to February 28, 2022).**

^{xvi} **“PNP backs kidnapping raps vs. Karapatan lawyer in Sagay massacre”**, GMA News, November 5, 2018, accessible at: <https://www.gmanetwork.com/news/topstories/nation/673630/pnp-backs-kidnapping-raps-vs-karapatan-lawyer-in-sagay-massacre/story/>.

The charges were dismissed in June 2019. **“DOJ junks kidnap, serious illegal detention raps vs NUPL member”**, ABS-CBN News, June 28, 2019, accessible at: <https://news.abs-cbn.com/news/06/28/19/doj-junks-kidnap-serious-illegal-detention-raps-vs-nupl-member>

^{xvii} **“Parañaque curfew violator tortured?”** Philippine Star, March 25, 2020, accessible at: <https://www.philstar.com/headlines/2020/03/25/2003270/paraque-curfew-violators-tortured>

^{xviii} **“LOOK: Birthday salu-salo for NCRPO chief Sinas amid ECQ”**, Rappler, May 12, 2020, accessible at: <https://www.rappler.com/nation/260657-ncrpo-chief-sinas-birthday-celebration-ecq-may-2020/>.

^{xix} **“DOJ: Pimentel didn’t break quarantine”**, Philippine Daily Inquirer, January 22, 2021, accessible at: <https://newsinfo.inquirer.net/1386786/doj-pimentel-didnt-break-quarantine>.

^{xx} Recommendation 133.53 Continue efforts to combat drugs and crime within a framework of the protection of and respect for human rights (Lebanon);

Recommendation 133.44 Ensure that the fight against crime strictly respects international standards (Peru);

^{xxi} The Philippine Human Rights Situationer, May 2020, page 59-61. Available at: <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200609-PH-Human-Rights-Situationer.pdf>.

^{xxii} Statistics from the human rights organization Karapatan, accessible at: <https://www.karapatan.org>. This figure does not include killings perpetrated in the “War on Drugs”.

^{xxiii} For instance, Randall Echanis, Jory Porquia and Zara Alvarez, and human rights lawyers Benjami Ramos, Juan Macabbabad, and Rex Fernandez, among others.

^{xxiv} **“Jovito ‘The Butcher’ Palparan sentenced for kidnapping students”**, Al Jazeera, September 17, 2018, accessible at: <https://www.aljazeera.com/news/2018/9/17/jovito-the-butcher-palparan-sentenced-for-kidnapping-students>.

^{xxv} See for lists of these outstanding cases: <https://newsinfo.inquirer.net/1573277/badoy-says-red-tagging-not-dangerous-but-427-slain-activists-show-otherwise>.

^{xxvi} **“Sinan’s appointment as new PNP chief is the epitome of impunity”**, Amnesty International, November 9, 2020, accessible at: <https://www.amnesty.org.ph/2020/11/sinan-appointment-as-new-pnp-chief-is-the-epitome-of-impunity/>.

^{xxvii} **“Slain rights volunteer was supposed to testify on amparo case – Karapatan”**, Philippine Daily Inquirer, June 18, 2019, accessible at: <https://newsinfo.inquirer.net/1131630/slain-rights-volunteer-was-supposed-to-testify-on-amparo-case-karapatan-exec>. **“Citing killing of Zara Alvarez, Karapatan presses SC to grant protection writs”**, Philippine Star, September 1, 2020, accessible at: <https://www.philstar.com/headlines/2020/09/01/2039341/citing-killing-zara-alvarez-karapatan-presses-sc-grant-protection-writs>.

^{xxviii} See again <https://newsinfo.inquirer.net/1573277/badoy-says-red-tagging-not-dangerous-but-427-slain-activists-show-otherwise>

^{xxix} **“CA rejects father’s plea for release of activist arrested without warrant”**, ABS CBN News, November 19, 2019, accessible at: <https://news.abs-cbn.com/news/11/19/19/ca-rejects-fathers-plea-for-release-of-activist-arrested-without-warrant>.

^{xxx} *Laurente C. Ilagan et al. v. Hon. Juan Ponce Enrile et al.*, G.R. No. 70748, October 21, 1985.

^{xxxi} **“62 nabbed as Army, police raid offices of activist groups in Bacolod”**, Visayas Today, November 3, 2019, accessible at: <http://davaotoday.com/main/human-rights/62-nabbed-as-army-police-raid-offices-of-activist-groups-in-bacolod/>.

^{xxxii} **“Karapatan chairperson posts bail after arrest over attempted murder charge”**, Rappler, May 18, 2021, accessible at: <https://www.rappler.com/nation/karapatan-chairperson-elisa-lubi-posts-bail-arrest-attempted-murder-charge/>.

^{xxxiii} **“Not a criminal’: Groups call for release of activist Teresita Naul”**, Rappler, March 15, 2021, accessible at: <https://www.rappler.com/nation/groups-statements-release-teresita-naul-one-year-after-arrest-2021/>.

^{xxxiv} **“Baby River Nasino laid to rest, but road to burial filled with tension”**, CNN Philippines, October 16, 2020, accessible at: <https://www.cnnphilippines.com/news/2020/10/16/Baby-River-burial-Reina-Mae-Nasino.html>.

^{xxxv} **“Plea deals drive up drug convictions, peak at 99k in a year”**, Rappler, January 22, 2021, accessible at: <https://www.rappler.com/nation/plea-bargain-drives-up-convictions-drug-suspects/>

^{xxxvi} **“Hilongos mass grave: Manila court dismisses multiple murder case vs peace consultants”**, ABS-CBN News, December 18, 2021, accessible at: <https://news.abs-cbn.com/news/12/18/21/hilongos-case-court-junks-multiple-murder-raps-vs-peace-consultants>.